



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

CHRISTUS ST JOHN HOSPITAL
C/O HOLLOWAY & GUMBERT
3701 KIRBY DRIVE STE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box
#15

MFDR Date Received

APRIL 30, 2008

Respondent Name

PACIFIC EMPLOYERS INSURANCE CO

MFDR Tracking Number

M4-08-5593-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated April 29, 2008: "...CHRISTUS St. John Hospital billed its usual and customary charges for its services. The total sum billed was \$129,439.93...The claim presented by CHRISTUS St. John Hospital was billed in the same manner and at the same rates that it would bill any health plan or insurer... Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Liberty Mutual Insurance Company do not conform to the reimbursement section of rule 134.401...it is the position of CHRISTUS St. John Hospital that all charges relating to the admission of [Claimant] are due and payable as provided for under Texas law and the Rules of the Division, as currently adopted and published at 28 TAC §134.400 *et seq.*"

Amount in Dispute: \$70,030.04

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated May 19, 2008: "We have reviewed the request from Christus St. Joseph Hospital and our position remains unchanged...Christus St. Joseph Hospital has a workers compensation contractual agreement with First Health for services rendered to [Claimant] for the 05/01/2007 through 05/06/2007...The provider sought authorization for 2 days and was approved; however, the provider did not seek additional authorization for 3 days as required by the TWCC Pre-authorization rules...Because the allowable inpatient billed charges fall below the providers agreed rate of \$40,000, the provider did not qualify for the outlier rate as indicated in their PPO agreement and was reimbursed appropriately at the contracted pre-diem rate amount. Liberty Mutual does not believe that Christus St. Joseph Hospital is due any further reimbursement..."

Response Submitted by: Liberty Mutual Insurance Company

Respondent's Supplemental Position Summary Dated November 28, 2011: "As outlined in the EOBs, Requestor's services exceeded those properly preauthorized per 28 Tex. Lab. Code §134.600. Respondent preauthorized a two-day stay; Requestor billed five days. Those excess charges total \$7,738.31. Respondent requests the Division decline to review any of these charges as the Requestor failed to obtain the requisite preauthorization. Requestor has failed to meet the Austin Third Court of Appeals' mandate that, to qualify for reimbursement under the Stop-Loss Exception...a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and; its total audited charges exceeded \$40,000.....Respondent's review of the records demonstrates no support for unusually extensive services...In short: the procedure was routine and entirely without incident...Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any

rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas Surgical per diem rate. No additional monies are due to the Requestor..."

Response Submitted by: Hanna & Plaut LLP

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
May 1, 2007 through May 6, 2007	Inpatient Hospital Services	\$70,030.04	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, effective May 2, 2006, requires preauthorization for inpatient hospitalizations.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- 42 – Z710 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE. (Z710)
- 42 – PA – FIRST HEALTH
- 24 – P303 – THIS SERVICE WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT. (P303)
- 62 – X170 – PRE-AUTHORIZATION WAS REQUIRED, BUT NOT REQUESTED FOR THIS SERVICE PER TWCC RULE 134.600. (X170)
- 97 – X668 – VENIPUNCTURE CHARGES ARE INCLUDED IN THE GLOBAL LAB FEES. (X668)
- Z612 – THIS BILL WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT WITH FIRST HEALTH. FOR QUESTIONS REGARDING YOUR CONTRACT, PLEASE CALL (800) 937-6824. (Z612)

Issues

1. Does a preauthorization issue exist in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the

requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for May 3, 2007 through May 6, 2007 based upon denial reason code "62 and X170."

28 Texas Administrative Code § 134.600(q)(1) states "The health care requiring concurrent review for an extension for previously approved services includes: inpatient length of stay."

The respondent states in the position summary that "Respondent preauthorized a two-day stay; Requestor billed five days."

The requestor did not submit documentation to support preauthorization was obtained for the additional three days in accordance with 28 Texas Administrative Code § 134.600(q)(1); therefore, a preauthorization issue exists in this dispute.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$129,439.93. The division concludes that the total audited charges exceed \$40,000.
3. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).
4. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).
5. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that "The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
 - (i) a rate for workers' compensation cases pre-negotiated between the carrier and the hospital;
 - (ii) the hospital's usual and customary charges; and
 - (iii) reimbursement as set out in section (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation "THIS BILL WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT WITH FIRST HEALTH." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier Pacific Employers Insurance Co. and Christus St. John Hospital prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital's usual and customary charges in this case, review of the medical bill finds that the health care provider's usual and customary charges equal \$129,439.93.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission." The length of stay was five days; however, documentation supports that the Carrier pre-authorized a length of stay of two days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$2,236.00 for the two authorized days.
- 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)." A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$97,403.44. The medical documentation provided finds that although the requestor submitted purchase orders to support what the requestor was charged by the supplier for the implantables, there was no documentation found to support the amounts that the requestor paid for the implantables. The division finds that the cost to the hospital for the implantables billed under revenue code 0278 cannot be established; therefore no reimbursement can be recommended for these items.
- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$512.75/unit for Thrombin for SOLN 5,000 unit vial and \$521.25/unit for Gelatin Sponge Dressing SZ 100. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The total reimbursement set out in the applicable portions of (c) results in a total of \$2,236.00.

Reimbursement for the services in dispute is therefore determined by the lesser of:

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	\$129,439.93
(iii)	\$2,236.00

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$27,049.31. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount*, and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$0.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	05/03/2013 _____ Date
--------------------	-------------------------------------------------	-----------------------------

_____ Signature	_____ Medical Fee Dispute Resolution Manager	05/03/2013 _____ Date
--------------------	-------------------------------------------------	-----------------------------

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.